

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff, Case No. 3:10CR506

Toledo, Ohio
Monday, January 3, 2011
2:50 p.m.

JENNIFER L. SMITH,

Defendant.

TRANSCRIPT OF ARRAIGNMENT AND PLEA HEARING
BEFORE THE HONORABLE JAMES R. KNEPP, II
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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Proceedings recorded by ECRO; transcript produced by computer-aided transcription.

1 THE COURT: We are here on the matter of United
2 States of America versus Jennifer L. Smith. We're here
3 today for, I believe, initial appearance and plea on the
4 case.

5 Present in the courtroom are Ms. Smith and her
6 attorney, Mr. Purcel. On behalf of the government, Mr.
7 Karol is here, Assistant United States Attorney Karol,
8 and -- I'm sorry?

9 MR. KAROL: I'm being assisted by United States
10 Secret Service Agent Louis Johns.

11 THE COURT: Welcome, Mr. Johns.

12 Also here from pretrial services is Ms. Lafferty.
13 Are the parties ready to proceed?

14 MR. PURCEL: Yes, Your Honor.

15 MR. KAROL: The government is, and I already put
16 on the Court's bench the waiver of indictment signed by the
17 defendant and counsel as well as the agreement to consent to
18 proceed with these proceedings in front of the magistrate,
19 Your Honor.

20 THE COURT: Okay.

21 Ms. Smith, the Court understands it's your intention
22 to waive indictment and to enter a plea of guilty this
23 afternoon. Before I can do that, I have to take care of
24 some business and kind of give you a roadmap of what we're
25 going to do.

1 The first thing I have to do is get your consent to my
2 taking your plea as opposed to an Article III judge, and
3 I'll explain to you what that means.

4 I have to satisfy myself that you're competent to
5 waive indictment, plead guilty at this time. I have to make
6 sure that you understand the trial rights which will be
7 waived if I recommend that your guilty plea be entered. I
8 have to make sure that you fully understand the nature of
9 the charges. And I have to make sure that your -- I have to
10 satisfy myself that your waiver and plea are voluntarily
11 made and not coerced in any way. So we will kind of go
12 through a little roadmap to get to that.

13 The first matter we have to address is your waiver of
14 the right to have the proceeding conducted by what's called
15 an Article III judge. Article III judges are appointed by
16 the president, confirmed by the senate for a term of life.
17 They are set forth in Article III of the Constitution.
18 That's why they call them that.

19 Do you understand you have the right to have this
20 matter heard today by an Article III judge?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that I am not an
23 Article III judge. I'm not a district judge. I'm what's
24 called a magistrate judge. What that means is that I am
25 appointed by other judges in the district for a term of

1 eight years subject to reappointment. Do you understand
2 that?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. Have you discussed with your
5 attorney my conducting these proceedings, and have you
6 concluded that it's in your best interest to proceed with me
7 here today even though I'm not a United States district
8 judge?

9 THE DEFENDANT: Correct.

10 THE COURT: As you know, this case is assigned to
11 Judge -- Senior District Judge James G. Carr. Are you
12 voluntarily and knowingly giving up your right to plead
13 before Judge Carr or another Article III judge, and do you
14 voluntarily consent to appearing before me for these
15 proceedings today?

16 THE DEFENDANT: Yes.

17 THE COURT: Thank you.

18 I have received a consent to -- consent to my
19 receiving your plea of guilty today.

20 Is this your signature on that written consent?

21 THE DEFENDANT: Correct, yes.

22 THE COURT: Has anyone made any threats or
23 promises to coerce or induce you to enter into this waiver?

24 THE DEFENDANT: No.

25 THE COURT: Okay. Upon your answers, upon your

1 answers to my questions and upon review of the written
2 consent, I will find that you have knowingly and voluntarily
3 consented to my conducting this proceeding today and I'll
4 make your written consent a part of the record in this case,
5 if my courtroom deputy will accept it for filing.

6 In a moment, Ms. Smith, we're going to place you under
7 oath and I'm going to ask you some questions and give you
8 some information about the impact of your plea and I'll make
9 sure that you understand the information that I give you.

10 Before I do that, I want to cover just a couple of
11 things with you. First of all, although you're going to be
12 waiving certain rights today and I'm going to go through a
13 litany of rights that you'll be waiving, right to the trial,
14 certain appellate rights, so forth, the one thing that
15 you're not going to have to waive today is your right to
16 counsel.

17 Nobody is going to ask you at any point during this
18 proceeding to waive your right to counsel. That stays with
19 you before, during, and after this proceeding today. And
20 what that means is if you need to speak with Mr. Purcel at
21 any point as we're going today, you stop, and you can talk
22 to him at any point if you need to talk with him, okay?
23 It's very important --

24 THE DEFENDANT: Yes.

25 THE COURT: -- for me to understand -- so you

1 understand you are not waiving your right to counsel. Do
2 you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. Another thing I need to make
5 sure you understand is in a minute we are going to place you
6 under oath. Once we do that, anything you say subjects you
7 to the penalties of perjury.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: You also need to understand that
11 giving truthful answers to some of the questions that I'm
12 going to ask you is going to necessarily result in your
13 waiving your right to not testify against yourself as
14 guaranteed by the Fifth Amendment because some of your
15 answers are going to be incriminating, because as part of
16 this plea this afternoon you're going to be required to
17 admit your guilt.

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand everything that
21 I've told you so far?

22 THE DEFENDANT: Yes.

23 THE COURT: Okay.

24 Madam deputy, would you please swear the defendant.

25 (The defendant was sworn in.)

1 THE COURT: Ma'am, would you please state your
2 full name for the record.

3 THE DEFENDANT: Jennifer L. Smith.

4 THE COURT: Have you ever had any other names?

5 THE DEFENDANT: My maiden name, Radjewski.

6 THE COURT: Okay. Could you spell that.

7 THE DEFENDANT: R-A-D-J-E-W-S-K-I.

8 THE COURT: And when did you change your name?

9 THE DEFENDANT: When I was married in 1999.

10 THE COURT: How old are you?

11 THE DEFENDANT: 37.

12 THE COURT: Where do you live?

13 THE DEFENDANT: 3155 Rocksberry, in Toledo.

14 THE COURT: Are you married?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you have any dependent children?

17 THE DEFENDANT: I do.

18 THE COURT: How many? What ages?

19 THE DEFENDANT: Two, and the oldest is six; the
20 youngest will be two next month.

21 THE COURT: How far did you go in school?

22 THE DEFENDANT: Some college but no degree.

23 THE COURT: No problems reading and writing
24 English, though, right?

25 THE DEFENDANT: No. No, sir.

1 THE COURT: What kind of work have you done in
2 the past few years?

3 THE DEFENDANT: I have worked at various
4 financial institutions, banks, credit union, doing
5 collections of mortgages, to consumer loans, to checking
6 accounts, things of that nature.

7 THE COURT: Are you in good physical health?

8 THE DEFENDANT: I believe so.

9 THE COURT: Okay. Are you under the influence of
10 any drugs, alcohol, or medication that would impair your
11 ability to understand what's going on here today?

12 THE DEFENDANT: No.

13 THE COURT: Have you taken any drugs, alcohol, or
14 medication in the last few days?

15 THE DEFENDANT: No.

16 THE COURT: Your mind is clear and you know why
17 you're here and you understand the purpose of this hearing?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you been under the care of a
20 doctor or hospital for a mental condition in the past five
21 years?

22 THE DEFENDANT: No. Never.

23 THE COURT: Mr. Purcel, have you had any
24 difficulty communicating with Ms. Smith?

25 MR. PURCEL: Absolutely not, Your Honor.

1 THE COURT: Have you discussed the case with her?

2 MR. PURCEL: Yes, I have, Your Honor.

3 THE COURT: Do you believe she understands the
4 purpose and nature of this hearing today?

5 MR. PURCEL: Yes, Your Honor. We've discussed
6 this case for the last year.

7 THE DEFENDANT: Almost two years, yeah.

8 THE COURT: Do either you or Mr. Karol have any
9 question or doubt as to Ms. Smith's competence at this
10 hearing today?

11 MR. PURCEL: None whatever.

12 MR. KAROL: The government does not, Your Honor.

13 THE COURT: Upon Ms. Smith's answers to my
14 questions and the statements of counsel, the Court makes a
15 finding that are you competent to enter a plea this
16 afternoon.

17 Ms. Smith, have you had enough time and opportunity to
18 speak with your lawyer about this matter?

19 THE DEFENDANT: Yes.

20 THE COURT: Have you told your lawyer everything
21 you know about the case?

22 THE DEFENDANT: Yes.

23 THE COURT: Are you satisfied with the advice,
24 competence, and efforts of your lawyer?

25 THE DEFENDANT: Yes.

1 THE COURT: Have you discussed all possible legal
2 defenses to the charges against you?

3 THE DEFENDANT: I believe so, yes.

4 THE COURT: Are you satisfied with the legal
5 assistance you've received?

6 THE DEFENDANT: Yes.

7 THE COURT: Remember, you can stop at any point
8 during this hearing if you need to and speak with him, okay.

9 THE DEFENDANT: Thanks.

10 THE COURT: Have you received and read a copy of
11 the criminal information -- indictment -- which was filed in
12 this case?

13 THE DEFENDANT: Yes, I have.

14 THE COURT: I'm sorry, information, yeah. I said
15 indictment. I meant information.

16 The information having been filed on December 6, 2010.
17 I'm not sure I gave the case number and caption at the top
18 here, but it's Jennifer L. Smith, Case Number 3:10CR506.

19 You have had an opportunity to review the information?

20 THE DEFENDANT: Yes.

21 THE COURT: Have you discussed it with your
22 lawyer?

23 THE DEFENDANT: I have.

24 THE COURT: Mr. Purcel, will you waive its formal
25 reading and any defects?

1 MR. PURCEL: Yes, we will, Your Honor.

2 THE COURT: Mr. Karol, would you please summarize
3 the charges, including the maximum penalties, mandatory
4 minimums, guideline calculations, special assessment,
5 supervised release terms, and any restitution provisions or
6 forfeiture requirements.

7 MR. KAROL: Yes, Your Honor.

8 This charge is bank fraud in violation of Title 18
9 United States Code, Section 1344. With bank fraud we have
10 to establish that there was a financial institution, and
11 that defendant knowingly devised a scheme and
12 artifice -- knowingly devised a scheme and artifice to
13 defraud such financial institution.

14 With respect to the penalties for bank fraud, there is
15 a maximum statutory penalty of up to 30 years imprisonment
16 and/or a \$1 million fine.

17 Upon conviction and sentencing, there is a mandatory
18 special assessment of \$100.

19 Following any term of imprisonment, the Court can
20 impose supervised release up to five years.

21 Should the defendant violate the conditions of her
22 supervised release, the Court can revoke the supervised
23 release term and order the defendant to serve a term of
24 imprisonment of the entire term of supervised release
25 without any credit for the time prior to the violation

1 itself.

2 Furthermore, with respect to -- oh, let me -- before I
3 forget, Your Honor, sentencing guidelines is but one factor.
4 A sentencing guidelines computation has been done by the
5 government. In a moment I'll explain. We have two
6 computations based on acceptance of responsibility.

7 With regard to the immediate loss -- and I'll explain
8 that in a second -- as a result of defendant's actions on
9 her own account we believe her offense level would be nine,
10 in a four to ten month sentencing range, which is known as a
11 Zone B sentencing range.

12 If it is the larger dollar amount, the restitution or
13 loss amount, I should say, the offense level would be as
14 high as 13 with a 12 to 18 month sentencing guideline range.

15 Sentencing guidelines are simply one factor the Court
16 must consider in imposing a sentence. It's simply an
17 advisory, one of the -- it's known as the advisory
18 sentencing guideline.

19 That brings us to the issue of loss and/or
20 restitution, Your Honor. The loss from defendant's own
21 account as a result of her bank fraud is just over \$20,000.

22 However, the credit union for whom she worked stated
23 it suffered an additional loss on other accounts, collateral
24 damage, you may call it -- and I'll explain when I give the
25 statement of facts -- an additional loss to other accounts

1 in the amount of \$52,000.

2 And I'll be clear when I give the statement of facts
3 she did not steal from those accounts. Simply other losses
4 were created as a result of her action.

5 THE COURT: Okay.

6 Mr. Purcel, were you able to understand the
7 summarization of the charges and penalties and so forth, and
8 do you concur with Mr. Karol's characterization?

9 MR. PURCEL: Yes, Your Honor.

10 THE COURT: Thank you.

11 Upon your review of the information, Ms. Smith, and
12 upon hearing Mr. Karol's summarization, do you understand
13 the nature of the charges against you?

14 THE DEFENDANT: Yes.

15 THE COURT: As well as the maximum penalties,
16 mandatory minimums, guideline calculation, special
17 assessment, supervised release term, and restitution? Do
18 you understand all that?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand if you enter a plea
21 with respect to those charges, you'll be admitting your
22 guilt and waiving any right to claim innocence in this case?

23 THE DEFENDANT: Correct.

24 THE COURT: It's my understanding that you wish
25 to waive indictment in this case, so I need to go over what

1 that means and make sure you understand what you're doing
2 there, okay?

3 Do you understand that if you do not waive indictment,
4 you may not be charged with a felony unless a grand jury
5 finds by a return of an indictment that there was probable
6 cause to believe that a crime was committed and that you
7 committed the crime.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand that in order to
11 obtain an indictment, the government must present the
12 charges to a grand jury before the matter can even be
13 brought to court. And a grand jury is composed of between
14 16 and 23 persons. At least 12 grand jurors must find
15 probable cause before you can be indicted.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand that a grand jury
19 might or might not vote probable cause in any given case,
20 including this one?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that if you waive
23 indictment by the grand jury the case will proceed against
24 you upon the information just as though you had been
25 indicted?

1 THE DEFENDANT: Correct.

2 THE COURT: It's my understanding that you
3 prepared a written waiver of indictment; is that correct?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you feel it's in your best
6 interest to enter into this written waiver?

7 THE DEFENDANT: At this time, yes.

10 THE DEFENDANT: No.

11 THE COURT: Mr. Purcel, do you know of any reason
12 why your client should not waive indictment in this case?

13 THE DEFENDANT: None, Your Honor.

14 THE COURT: Ms. Smith, do you understand
15 everything we have done so far?

16 THE DEFENDANT: Yes.

17 THE COURT: Is it your wish to waive indictment
18 by the grand jury?

19 THE DEFENDANT: It is.

20 THE COURT: And this is your signature?

21 THE DEFENDANT: Correct, yes.

22 THE COURT: Upon that, the Court will make a
23 finding that you've knowingly and voluntarily waived
24 indictment in this case and will file your written waiver as
25 a part of the record.

1 Ms. Smith, have you reviewed your constitutional
2 rights with Mr. Purcel?

3 THE DEFENDANT: Yes.

4 THE COURT: I understand that, but I'm going to
5 go ahead and review certain of those rights with you here on
6 the record so I can satisfy myself that you understand them,
7 okay?

8 THE DEFENDANT: Um-hum.

9 THE COURT: Under the Constitution of the United
10 States you have the right to a trial either to a court or to
11 a jury. And at that trial you would have a right to
12 confront and cross-examine witnesses that the government
13 might bring to testify against you.

14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: At the trial you would have a process
17 for obtaining witnesses to testify on your behalf, your own
18 witnesses. And at the trial the government would be
19 required to prove your guilt beyond a reasonable doubt.

20 Do you understand both of those things?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that you could not
23 be compelled to testify against yourself at a trial?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that by waiving and

1 entering your plea you're giving up your right not only to
2 the trial but to all of those other rights that I just
3 listed?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand you have a right to
6 plead not guilty?

7 THE DEFENDANT: Yes.

8 THE COURT: You have a right to plead not guilty
9 even if you are guilty?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that if you plead
12 not guilty, you would have the right to a speedy trial at
13 which you would have the right to be represented by a
14 lawyer, and if you could not afford a lawyer, the Court
15 would appoint one to represent you.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand that if this matter
19 were to proceed to trial, you would be presumed innocent,
20 and you wouldn't have to prove that you're innocent. The
21 burden of proof in a criminal trial stays with the
22 government until the very end.

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: If you had a trial you could not be

1 forced to testify but you would have the right to testify if
2 you chose to. And if you chose not to testify, no inference
3 or suggestion of guilt could be drawn from the fact that you
4 did not testify.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: And that's an important right that
8 every defendant has in a criminal case.

9 If your trial was before a jury, a large number of
10 potential jurors whose names are chosen at random would be
11 summoned to this courthouse and we would ultimately comprise
12 a jury of 12 persons after you and your lawyer had an
13 opportunity to participate in the jury selection process and
14 to exclude jurors for cause, for example, if a juror was
15 biased or for some other legally sufficient reason. You
16 would also have a right to exclude certain jurors for no
17 cause whatsoever. Those are called peremptory challenges.
18 A jury would have to agree unanimously before it could find
19 you guilty.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand everything I've
23 told you so far?

24 THE DEFENDANT: Yes.

25 THE COURT: If at trial you were found guilty,

1 you would also then have a right to appeal your conviction
2 under certain circumstances.

3 Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: You would also have a statutory right
6 to appeal your sentence under certain circumstances.

7 Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that if you plead
10 guilty you're waiving those rights? And if your plea is
11 accepted, there will be no trial, and I will enter a
12 recommendation that a finding of guilty be entered and that
13 the district judge will consider that recommendation. And
14 assuming he concurs, he will enter a finding of guilty upon
15 the record and then sentence you on the basis of your plea
16 after considering a presentence investigation.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you also understand that by
20 pleading guilty you will be deprived of valuable civil
21 rights such as the right to vote, the right to hold public
22 office, the right to serve on a jury, and the right to
23 possess any kind of firearm.

24 Are you willing to give up these rights?

25 THE DEFENDANT: Yes.

1 THE COURT: The government outlined the maximum
2 penalty, including not only the sentence but mandatory
3 minimum, special assessment, supervised release term, and
4 restitution and forfeiture requirements.

5 Do you understand that following a prison term you
6 will be subject to a period of supervised release and that
7 violation of the conditions of supervised release can result
8 in revocation of that release and additional jail time
9 without any credit for supervised release time already
10 served prior to the violation?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand that restitution
13 may be ordered as a condition of your sentence?

14 THE DEFENDANT: Yes.

15 THE COURT: Depending on your financial status,
16 the Court can order you to pay the cost of your confinement
17 or supervised release. Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you also understand as a result of
20 your guilty plea an assessment of \$100 per count must be
21 imposed by the Court?

22 THE DEFENDANT: Yes.

23 THE COURT: Have you and your lawyer talked about
24 the sentencing guidelines?

25 THE DEFENDANT: Yes.

1 THE COURT: You heard Mr. Karol indicate at least
2 a preliminary sentence calculation. Do you understand that
3 it's not possible to calculate with any specificity your
4 sentence at this point in time?

5 THE DEFENDANT: Yes.

6 THE COURT: Once a presentence investigation has
7 been completed, the Court will be in a position to determine
8 a guideline range based upon your crime in this case and
9 your criminal history.

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: Under the current state of the law,
13 the Court must treat the guidelines as advisory, meaning
14 they're not binding but they are a factor the Court must
15 consider.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: The Court will consider the
19 guidelines as well as the provisions of Section 3553(a) of
20 Title 18 which contain factors a judge must consider in
21 imposing a sentence. Those factors include but are not
22 limited to the nature and circumstances of the crime, and
23 the history and characteristics of the defendant, the need
24 for the sentence to reflect the seriousness of the offense,
25 to promote respect for the law, and to provide just

1 punishment, to afford a deterrent to criminal conduct, to
2 protect the public from further crimes, and to provide you
3 with needed educational or vocational training, medical
4 care, drug, or other correctional treatment.

5 Mr. Karol, would you please summarize what the
6 evidence would be if this case were to proceed to trial?

7 And Ms. Smith, I'm going to ask you to listen very
8 carefully because at the end of this I'm going to
9 essentially ask you to adopt it as your own statement. I
10 could make you stand up and basically say here is what I
11 did, but I think it's more productive and it's easier for
12 the process if we have Mr. Karol just explain what the
13 evidence would be.

14 When he is done, I'm going to ask you do you agree
15 with that, because you can't plead guilty unless there is
16 evidence to support that you actually committed the crime.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. Mr. Karol.

20 MR. KAROL: Thank you, Your Honor.

21 The critical events took place between March of 2008
22 and January of 2009. During that time period, Ms. Smith was
23 employed at the Directions Credit Union here in Northwest
24 Ohio which is a federally insured credit union. She also
25 had bank accounts at three other financial institutions:

1 The WoodForest National Bank, Capital One Bank, and
2 Washington Mutual Bank.

3 The Directions Federal Credit Union, as is the case
4 with many credit unions, processes their checks through a
5 larger institution. In the case of Directions Credit Union,
6 they processed it through the Corporate One Federal Credit
7 Union, which in turn processed it through the federal
8 reserve system.

9 In the event that a check is returned as having
10 non-sufficient funds, it ultimately is returned to the
11 Directions Credit Union. And the Corporate Federal Credit
12 Union in turn charges the Directions Credit Union's account
13 for all the items returned as non-sufficient funds.

14 A daily list identifying those items along with copies
15 of the individual checks is provided to Directions Credit
16 Union by the Corporate Federal Credit Union in the
17 processing system.

18 During the relevant time period, we would establish
19 that Ms. Smith wrote checks from her bank accounts at the
20 three other institutions I mentioned, WoodForest National
21 Bank, Capital One Bank, and Washington Mutual Bank. Those
22 checks were written on insufficient funds accounts. She did
23 not have adequate funds to cover the checks in those
24 institutions.

25 She deposited those checks into her Directions Credit

1 Union account and used those funds for her personal uses.

2 Ultimately the checks go back to the institutions.

3 It's determined they are non-sufficient checks, and they're
4 routed back again through that federal reserve system
5 through the Corporate Federal Credit Union and back to the
6 Directions Credit Union.

7 At this point in time, we would establish that on
8 separate occasions, we believe up to 21 separate occasions,
9 the defendant intercepted the mail. When I say intercepted,
10 she opened the mail, whatever that Directions Credit Union
11 got, destroyed the report identifying her checks as
12 non-sufficient checks as well as checks accompanying that
13 report, including her checks.

14 In essence, she was doing a check kite, Your Honor,
15 and destroying the checks as they came back, the
16 insufficient checks as they came back to the Directions
17 Credit Union.

18 The loss -- and this is what I was explaining earlier.
19 The loss on her account itself that was discovered was
20 \$20,429. Additionally, Directions Credit Union has advised
21 the government that there apparently is a 90-day federal
22 reserve -- the federal reserve only keeps documentation for
23 90 days regarding these items of non-sufficient funds and
24 that a member credit union must act upon that daily list I
25 mentioned that gets sent back to the credit union in a

1 timely manner. Otherwise no collections action can take
2 place or can occur, and the credit union ends up absorbing
3 the loss.

4 Because of the time that lapsed before the credit
5 union discovered the fraud, there were a number of other
6 members, according to the credit union, who also had
7 non-sufficient funds that were beyond that 90-day window.

8 The Directions Credit Union has advised the government
9 that additional members whose accounts were overdrawn or had
10 deposited non-sufficient checks totalled \$52,787.03.

11 Mr. Purcel and I have discussed this matter, and I
12 fully expect defendant to contest any responsibility for
13 that loss, assuming there is that loss, any responsibility
14 of this defendant for that loss nor, according to Mr.
15 Purcel, should she be held accountable in determining the
16 loss amount.

17 But that's a sentencing computation, Your Honor, not a
18 matter with respect to whether in fact she committed the
19 offense.

20 Did I confuse it sufficiently?

21 THE COURT: No. I understand.

22 Is that it?

23 MR. KAROL: And we would establish all those
24 facts, Your Honor, if we proceeded to trial.

25 THE COURT: Taking aside the collateral damage

1 issue, meaning the \$50,000, what is the amount that -- from
2 her own account? 20,000 --

3 MR. KAROL: It was \$20,429, Your Honor.

4 THE COURT: Okay. Taking aside the collateral
5 damage characterization that you heard Mr. Karol make, do
6 you agree with his statement in every other regard?

7 THE DEFENDANT: I do. I think.

8 THE COURT: Well, you need to tell me. If there
9 is something you don't agree with let me hear it.

10 THE DEFENDANT: Well, I disagree with this
11 paragraph.

12 MR. PURCEL: He said keeping aside the 50,000 --

13 THE DEFENDANT: Yes, I agree with that.

14 MR. PURCEL: That you did take the \$20,429?

15 THE DEFENDANT: Yes.

16 THE COURT: And just so we're clear, you are
17 admitting that you, through the enterprise that Mr. Karol
18 just described, you took \$20,429?

19 THE DEFENDANT: Yes.

20 THE COURT: You dispute the government's and/or
21 the credit union's characterization that that same action by
22 you resulted in the loss of \$52,787.03?

23 THE DEFENDANT: Exactly.

24 THE COURT: You understand that's a determination
25 for sentencing, but your guilt for the offense charged is

1 premised on the \$20,429 which you are admitting that you
2 took, and you took it the way Mr. Karol described, from the
3 people Mr. Karol said you took it from? You agree in every
4 other regard with what Mr. Karol said, correct?

5 THE DEFENDANT: Yes.

6 THE COURT: Okay. Thank you.

7 Mr. Purcel, do you wish to add anything else or make
8 any other corrections?

9 MR. PURCEL: No, Your Honor.

10 THE COURT: Ms. Smith, what is your plea to the
11 information?

12 THE DEFENDANT: Guilty.

13 THE COURT: Is your plea entirely voluntarily
14 made without threats or promises for you to enter into this
15 plea?

16 THE DEFENDANT: Yes.

17 THE COURT: Your plea then is of your own free
18 will because you are guilty, correct?

19 THE DEFENDANT: Correct.

20 THE COURT: Since you acknowledge that you are in
21 fact guilty as charged in the information and that you have
22 freely waived indictment in this case, that there is an
23 adequate factual basis for your plea, that you've had the
24 assistance of an able lawyer, that you know your right to a
25 trial which is being waived if your plea is accepted, you

1 know what the maximum possible punishment is and what the
2 advisory guidelines preliminarily provide, and on the basis
3 of the answers given by you under oath and on the record and
4 in the presence of your lawyer as well as the remarks of
5 counsel for both sides, I hereby find as follows:

6 I find that you were advised of your constitutional
7 rights; that you made a knowing, intelligent, and voluntary
8 waiver of those rights; and further that you've been advised
9 of your limited rights for appeal of both the plea and the
10 sentence.

11 I further find that the plea was made knowingly,
12 voluntarily, and with an understanding of the charge and the
13 maximum penalties involved, and the affects of the plea.

14 Accordingly, I'm entering a finding and recommendation
15 of a plea of guilty which will be submitted to the district
16 judge.

17 If Judge Carr accepts and adopts my findings, a guilty
18 entry -- a guilty judgment shall enter forthwith.

19 To expedite the completion of this case, the matter
20 will be immediately referred to the probation office for the
21 preparation of a presentence report which we talked about
22 before.

23 Sentencing will take place not earlier than 15 weeks
24 from when the district judge adopts my recommendation and
25 enters the judgment upon a guilty plea.

1 The parties are instructed to review the presentence
2 investigation report, to file any objections to that report,
3 and to file any additional presentence memorandum in advance
4 of the sentencing hearing.

5 Ms. Smith, you're expected to cooperate fully and
6 completely with the preparation of the presentence report.
7 Failure to do so will certainly be called to the attention
8 of the district judge prior to sentencing and would
9 presumably be taken into consideration by him in determining
10 the appropriate sentence and particularly whether to grant
11 credit for acceptance of responsibility, so conduct yourself
12 accordingly.

13 Mr. Karol, what is the government's position with
14 regard to presentence release or detention?

15 MR. KAROL: We concur with the recommendation of
16 a \$10,000 unsecured bond, and she -- prior to the Court
17 entering the court, her attorney requested, and we have no
18 objection to a modification of the condition that she be
19 allowed to travel to Cincinnati to visit her mother. Her
20 travel was restricted to the Northern District of Ohio.
21 That would require travel to the Southern District. The
22 government has no objection to that.

23 THE COURT: Ms. Lafferty?

24 THE PRETRIAL SERVICES OFFICER: No objection.

25 THE COURT: Should we just say Ohio then?

1 THE PRETRIAL SERVICES OFFICER: That's fine.

2 THE COURT: Ms. Smith, Mr. Purcel, do you folks
3 have a copy of the presentence report and
4 recommendation -- not presentence, pretrial services
5 recommendation?

6 MR. PURCEL: Yes, Your Honor. We do have a copy.

7 THE COURT: Could you follow along with those as
8 I go through them.

9 Ms. Smith, what I'm going to go through -- I'm going
10 to follow the recommendation.

11 Do you have any objections, Mr. Purcel --

12 MR. PURCEL: None whatsoever.

13 THE COURT: -- to the terms and conditions?

14 Ms. Smith, I'm going to follow the recommendation
15 that's been made by pretrial services here, and I am going
16 to order that you be released on a \$10,000 unsecured bond.
17 I'm going to put certain terms and conditions on that bond
18 which it's really important that you follow because your
19 failure to follow one of these terms and conditions may well
20 result in your -- in revocation of your terms of release.
21 It can also result in separate charges for another criminal
22 offense. Particularly your failure to appear is a serious
23 offense and would be prosecuted as such.

24 Furthermore, you need to understand that your
25 commission of any other crime, state or local, while you're

1 under this release is itself -- can result in much more
2 serious punishment for that crime because of the fact that
3 you're out on this terms of release.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: Okay. I want you to listen real
7 closely as I give you the terms and conditions. You're also
8 going to get them in writing and then you're going to be
9 asked to sign them. But it's real important that you and I
10 look each other in the eye and we understand what's going on
11 here, okay?

12 THE DEFENDANT: Yes.

13 THE COURT: To reasonably assure your appearance
14 and the safety of the community, it will be the finding of
15 the Court that you be released on a \$10,000 unsecured bond
16 with the following conditions:

17 You shall not commit any offense in violation of
18 federal, state, or local law while on release in this case.

19 You shall immediately advise pretrial services, the
20 defense counsel, and the U.S. attorney in writing before any
21 change in address and/or telephone number.

22 You shall refrain from possessing a firearm,
23 destructive device, or dangerous weapon.

24 It's my understanding that there are firearms in your
25 home but that they are kept in a compartment now, they're in

1 a safe, and that you will not have access to that; is that
2 correct?

3 THE DEFENDANT: It is correct.

4 THE COURT: And it's your statement here on the
5 record under oath that you will not have access to those
6 weapons?

7 THE DEFENDANT: I do not and I will not.

8 THE COURT: Okay, because you understand as a
9 condition of letting you go home we could order that those
10 be removed from the home, but I'm not going to do that.

11 THE DEFENDANT: Yes.

12 THE COURT: I'm going to let you do what you just
13 did, okay.

14 So you shall refrain from possessing a firearm,
15 destructive device, or dangerous weapon.

16 You shall be restricted in your travel to the State of
17 Ohio and/or subject to further order of this Court.

18 You shall refrain from the use or unlawful possession
19 of a narcotic drug or other controlled substance as defined
20 in 21 U.S.C. Section 802 unless it's prescribed by a
21 licensed medical practitioner.

22 You shall appear at all proceedings as required and
23 shall surrender for service of any sentence imposed as
24 directed.

25 You must cooperate in the collection of a DNA sample

1 if the collection is authorized by 42 U.S.C. Section
2 1413(a) .

3 You must submit to pretrial services supervision as
4 directed and submit to home, employment -- home or
5 employment visits by pretrial services as deemed necessary
6 and promptly inform pretrial services of any address, phone
7 number, or employment changes.

8 You shall comply with the Northern District of Ohio
9 defendant offender employment policy which may include
10 participation in training, education, counseling, and/or
11 daily job search as directed by the pretrial services and/or
12 probation officer.

13 If you are not in compliance with the condition of
14 supervision requiring full-time employment at a lawful
15 occupation as directed by pretrial services, you may be
16 directed to perform up to 20 hours of community service per
17 week until employed.

18 Do you understand all those terms?

19 THE DEFENDANT: Yes.

20 THE COURT: Are you willing to abide by those?

21 THE DEFENDANT: I am, yes.

22 THE COURT: I remind you that your failure to
23 appear at the sentencing hearing is a separate criminal
24 offense for which severe penalties can attach. And if you
25 commit a crime while on release you'll be subject to a more

1 severe penalty than those which will be imposed upon other
2 defendants for the same crime.

3 Have you understood everything we have covered today?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you have any final questions of
6 me, anything about the case, your plea, the hearing today?

7 THE DEFENDANT: I don't think so.

8 THE COURT: Anything from counsel?

9 MR. KAROL: Nothing further, Your Honor. Thank
10 you very much.

11 MR. PURCEL: Nothing further, Your Honor.

12 THE COURT: Okay. Court is adjourned.

13 (Proceedings concluded at 3:19 p.m.)

14

15 C E R T I F I C A T E

16

17 I certify that the forgoing is a correct
18 transcript from the record of proceedings in the
19 above-entitled matter.

20

21

S/Caroline Mahnke

1/13/2011

22

Caroline Mahnke, RMR, CRR

Date

23

24

25